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11 *Attorneys for Plaintiff Tia Williams-Sullivan*

12  
13 **UNITED STATES DISTRICT COURT**  
14 **DISTRICT OF ARIZONA**

15  
16 Tia Williams-Sullivan,  
17 Plaintiff,

18 v.

19 The Prudential Insurance Company of America;  
20 JPMorgan Chase Bank, N.A.; JPMorgan Chase  
Bank, N.A. Disability Plan,

21 Defendants.

Case No.

**COMPLAINT**

22  
23 Now comes the Plaintiff Tia Williams-Sullivan (hereinafter referred to as “Plaintiff”),  
24 by and through her attorney, Scott E. Davis, and complaining against the Defendants, she  
25 states:

26 *Jurisdiction*

1. Jurisdiction of the court is based upon the Employee Retirement Income Security Act of 1974 (ERISA); and in particular, 29 U.S.C. §§ 1132(e)(1) and 1132(f). Those provisions give the district courts jurisdiction to hear civil actions brought to recover employee benefits. In addition, this action may be brought before this Court pursuant to 28 U.S.C. § 1331, which gives the Court jurisdiction over actions that arise under the laws of the United States.

## *Parties*

2. At all times relevant to this action, Plaintiff was a resident of Maricopa County, Arizona.

3. Upon information and belief, JPMorgan Chase Bank, N.A., a New York corporation (hereinafter referred to as the “Company”), sponsored, administered and purchased a group long-term disability insurance Policy (hereinafter referred to as the “Policy”) which was issued to the Company in the State of New York, and is fully insured by The Prudential Insurance Company of America (hereinafter referred to as “Prudential”).

4. The specific Prudential group long-term disability (“LTD”) insurance Policy is known as Group Contract No. G-50684-DE (the Policy is attached hereto as Exhibit “A”).

5. The Company's purpose in purchasing the Policy was to provide disability insurance and income protection for its employees.

6. Upon information and belief, the Policy may have been included in and part of an employee benefit plan, specifically named the JPMorgan Chase Bank, N.A. Disability Plan (hereinafter referred to as the “Plan”) which may have been created to provide the Company’s employees with welfare benefits.

7. At all times relevant hereto, the Plan constituted an ERISA “employee welfare benefit plan” as defined by 29 U.S.C. § 1002(1).

8. Upon information and belief, Prudential functioned as the claim administrator of the Plan and Policy.

9. Pursuant to the relevant ERISA regulation, the Company, and/or the Plan may not have made a proper delegation or properly vested fiduciary authority or power for claim administration in Prudential.

10. Prudential fully insured the Policy and made every decision regarding whether Plaintiff was disabled in her LTD claim.

11. In administering Plaintiff's claim, Prudential operated under dual and conflicting roles as the decision maker with regard to whether Plaintiff was disabled, and also the payor of benefits if it found she was disabled.

12. Prudential operated under a structural financial conflict of interest because it fully insured the Policy and made every decision regarding whether Plaintiff was disabled in her LTD claim.

13. If Prudential found Plaintiff was disabled, it was then financially liable to pay her LTD benefits potentially for the maximum timeframe set forth in the Policy.

14. The Company, Prudential and the Plan conduct business within Maricopa County and all events giving rise to this Complaint occurred within Arizona.

### Venue

15. Venue is proper in this district pursuant to 29 U.S.C. § 1132(e)(2) and 28 U.S.C. § 1391.

### *General Allegations*

16. Incident to her employment, Plaintiff was a covered employee pursuant to the Plan and the relevant Policy, and a “participant” as defined by 29 U.S.C. § 1002(7).

17. Plaintiff seeks disability income benefits in the form of “Regular Occupation” benefits from the Plan and the relevant Policy pursuant to § 502(a)(1)(B) of ERISA, 29 U.S.C. § 1132(a)(1)(B), as well as any other non-disability employee benefits she may be entitled to

1 from the Plan, from any other Company Plan, and/or from the Company itself as a result of  
2 being found disabled in this action.

3 18. Plaintiff also seeks a determination that she is disabled and meets the “Any  
4 Gainful Occupation” definition of disability set forth in the Plan and/or Policy as the evidence  
5 she submitted to Prudential supports a determination by the Court that she also meets the Plan  
6 and/or Policy’s “Any Gainful Occupation” definition of disability and is also entitled to those  
7 benefits at this time.

8 19. The issue regarding whether Plaintiff meets the “Any Gainful Occupation”  
9 definition of disability in the Plan and/or Policy is ripe before the Court to adjudicate since  
10 the “Regular Occupation” definition of disability timeframe (twenty-four (24) months after  
11 she is first entitled to benefits) in the Plan and/or Policy expired on or about August 28, 2019.

12 20. On or about August 28, 2019, or soon thereafter, Plaintiff’s LTD claim entered  
13 into the Policy’s “Any Gainful Occupation” definition of disability, meaning that after that  
14 date, Plaintiff must prove she meets the Policy’s “Any Gainful Occupation” definition of  
15 disability to be entitled to LTD benefits.

16 21. All of Plaintiff’s evidence referenced herein, as well as her evidence contained  
17 in Prudential’s claim file (i.e. the Administrative Record), proves that she meets the “Any  
18 Gainful Occupation” definition of disability in the Policy.

19 22. On or about February 27, 2017, after working for the Company as a loyal  
20 employee in the occupation of an Investigations Specialist, Plaintiff became disabled from  
21 working in that occupation, and also disabled from working in any occupation due to her  
22 disabling medical conditions.

23 23. Through the present date, due to her disabling medical conditions, Plaintiff has  
24 remained continuously disabled and unable to work in any occupation since February 27,  
25 2017.

1           24.   Following the onset of her disability, Plaintiff filed a claim for short-term  
2 disability (“STD”) benefits which was administered by, reviewed and approved by Prudential.

3           25.   After reviewing the evidence supporting Plaintiff’s STD claim, Prudential  
4 concluded she met the definition of disability set forth in the Company’s self-insured STD  
5 Plan (attached hereto as Exhibit “B”) for the entire (maximum) duration of time STD benefits  
6 can be paid, which is for one hundred eight-one (181) days.

7           26.   Plaintiff’s STD benefits have been fully paid by the Company and those  
8 benefits have been exhausted.

9           27.   Following the exhaustion of her STD claim/benefits, Plaintiff remained  
10 disabled from working in any occupation and as a result, filed a claim for LTD benefits under  
11 the relevant Policy with Prudential.

12           28.   Prudential made every decision in Plaintiff’s LTD claim regarding whether she  
13 was disabled and eligible for benefits pursuant to the terms of the relevant Policy.

14           29.   Upon information and belief, the relevant Prudential LTD Policy’s definition  
15 of disability governing Plaintiff’s LTD claim is as follows:

16           “You are disabled when Prudential determines that:

- 17           • You are unable to perform the *material and substantial duties* of your  
18 *regular occupation* due to your *sickness* or *injury*; and  
19           • You are under the *regular care* of a *doctor*; and  
20           • You have a 20% or more loss in your *monthly earnings* due to that  
sickness or injury.

21           After 24 months of payments, you are disabled when Prudential determines that  
22 due to the same sickness or injury:

- 23           • You are unable to perform the duties of any *gainful occupation* for  
24 which you are reasonably fitted by education, training or experience;  
and  
25           • You are under the regular care of a doctor.”  
26

1           30. Plaintiff was **not represented** throughout the entirety of Prudential's review of  
2 her LTD claim.

3           31. In support of her claim for LTD benefits, Plaintiff submitted to Prudential,  
4 medical and other evidence which supported her allegation that she met the "Regular  
5 Occupation" definition of disability defined in the relevant Policy.

6           32. In support of her claim, Plaintiff submitted to Prudential a March 15, 2017  
7 medical questionnaire completed by her board-certified treating family medicine physician  
8 who marked "no" when asked whether he believed Plaintiff is "...able to perform work of  
9 any kind."

10          33. Plaintiff submitted to Prudential April 4, 2017 and May 10, 2017 medical  
11 questionnaires completed by the same physician who responded "poor" when asked to  
12 describe Plaintiff's "current functional ability."

13          34. Plaintiff submitted to Prudential a June 19, 2017 medical questionnaire  
14 completed by the same physician who responded "significantly limited" when asked to  
15 describe Plaintiff's "current functional ability."

16          35. Prudential initially found Plaintiff *was disabled* as defined in its Policy and  
17 approved her LTD claim.

18          36. Prudential found Plaintiff *was disabled*, entitled to and it paid her LTD benefits  
19 from August 28, 2017 through April 30, 2018 (for approximately eight (8) months).

20          37. In a letter dated April 13, 2018, notwithstanding Plaintiff's evidence which  
21 clearly supports her claim and confirmed that nothing had improved or changed with her  
22 disabling medical conditions that would allow her to work, Prudential informed Plaintiff that  
23 it was terminating her LTD benefits effective April 30, 2018 after concluding, "...we have  
24 determined that you no longer meet the definition of disability as defined in the attached Long  
25 Term Disability Policy Provisions. Therefore, we have terminated your claim."  
26

1           38. Plaintiff alleges that Prudential's termination of her LTD claim and benefits  
2 when *nothing improved or changed* with her disabling medical conditions and work  
3 limitations, particularly after it found she was unable to work in her occupation for the entire  
4 STD timeframe (using *essentially the same definition of disability*)(See Exhibit "B"), and for  
5 *eight (8) months thereafter* in her LTD claim, is evidence of its conflict of interest at work  
6 and that its conflict motivated its terminated of her claim.

7           39. Prudential's termination of Plaintiff's LTD claim was unlawful, illogical,  
8 implausible, and an abuse of any discretion the Policy may have afforded it.

9           40. Plaintiff alleges that Prudential's termination of her LTD claim and benefits  
10 when the LTD claim presented *significant financial liability* for the company compared to her  
11 STD claim (where it had no liability as those benefits were paid by the Company) is relevant,  
12 palpable evidence of its financial conflict of interest at work and is a motivating factor for it  
13 terminated Plaintiff's LTD claim.

14           41. Prudential's denial of Plaintiff's LTD claim and termination of benefits was  
15 motivated by its financial conflict of interest and its desire to save money.

16           42. Pursuant to 29 U.S.C. § 1133, Plaintiff timely appealed Prudential's April 13,  
17 2018 termination of her LTD benefits.

18           43. In support of her claim and appeal, Plaintiff, who was *not represented*,  
19 submitted to Prudential additional reliable, credible, compelling medical and other evidence  
20 which supported her allegations she is disabled, that she met and continues to meet the  
21 aforementioned definitions of disability set forth in the Policy.

22           44. Plaintiff submitted to Prudential a May 10, 2018 office visit note from her  
23 board-certified treating family medicine physician who confirmed, "Patient [is] unable to do  
24 any type of work at this time."

25           45. As part of its review of Plaintiff's LTD claim, Prudential obtained a medical  
26 records only "paper review" (meaning the consultant *never* spoke to, saw or physically

1 examined Plaintiff) from a doctor that its third-party vendor retained, named Gianelia F.  
2 Guernelli, M.D.

3 46. Gianelia F. Guernelli, M.D. was retained by Prudential through its third-party  
4 vendor named Managing Care. Managing Claims. (hereinafter referred to as “MCMC”).

5 47. MCMC is a biased company who operated under a conflict of interest in  
6 Plaintiff’s claim given its long, extensive business relationship and history of providing  
7 biased medical records reviews that favor disability insurance companies such as  
8 Prudential and which disfavor claimants, such as occurred in Plaintiff’s LTD claim.

9 48. On similar facts as the instant case, the Court in *Hertz v. Hartford Life &*  
10 *Accident Ins. Co.*, 991 F. Supp 2d 1121, 1136 (D. Nev 2014), reversed the denial of an  
11 ERISA disability claim made by a conflicted insurance company (like Prudential) after it  
12 reviewed discovery answers related to alleged conflicts of interest and bias involving the  
13 disability insurance company and its retained third-party vendor, who was retained to find  
14 an alleged “independent” doctor to review only Hertz’s medical records (*See* Exhibit “C”  
15 for *Hertz* decision).

16 49. Discovery responses in *Hertz* revealed that 95% of the time in ERISA  
17 disability claims, the third-party vendor and its retained, so called “independent” medical  
18 records reviewing doctors opined that a claimant **was not disabled and was able to work.**

19 50. *Hertz* specifically referenced the third-party vendor and its retained doctor’s  
20 conflicts of interests and bias in its Order:

21 “Accordingly, *MLS* [i.e. third-party vendor] ***found that approximately 95% of all***  
22 ***claimants could perform some type of work.***

23 During that same time frame, Dr. Rim reviewed fourteen (14) claims for  
24 Hartford...Significantly, of those fourteen (14) claims reviewed, ***Dr. Rim did not***  
***find that a single claimant was completely unable to perform any type of work.***

25 ***Accordingly, Dr. Rim found that 100% of all claimants could perform some type***  
26 ***of work.***



1 The Court finds these statistics strongly suggest that both MLS and Dr. Rim  
2 harbored a significant bias towards finding a claimant capable of performing some  
3 type of work.

4 *See Montour*, 588 F.3d at 634 (noting relevance of statistics regarding Hartford's  
5 rate of claims denials or how frequently it contracts with the file reviewers it  
6 employed in that case to the issue of bias)." (emphasis added).

7 51. Similar to Dr. Rim's involvement in *Hertz*, Plaintiff alleges Dr. Guernelli is not  
8 an "independent" medical reviewer as Prudential and MCMC have alleged, but he is instead  
9 a biased, long-time medical consultant who is repeatedly retained by MCMC, other third-  
10 party vendors and other disability insurance companies, such as Prudential.

11 52. Due to his long-time relationship with Prudential, MCMC and/or the disability  
12 insurance industry, Dr. Guernelli is biased and operated under his own conflicts of interests.

13 53. Dr. Guernelli's bias and conflicts of interest led to his selective, one sided and  
14 biased review of Plaintiff's evidence and is the reason he deliberately and blatantly de-  
15 emphasized and minimized her evidence of disability, so he could render an opinion that the  
16 Plaintiff was not disabled so he could favor Prudential and its vendor who retained him.

17 54. Dr. Guernelli's bias, conflicts of interest and relationships with the disability  
18 insurance industry, including the third-party vendor who retained him, are the reasons he  
19 ultimately rendered an opinion that was adverse to Plaintiff and her claim.

20 55. Due to his bias and conflicts of interest, Dr. Guernelli has an incentive to protect  
21 his own consulting relationships with Prudential, MCMC and/or the disability insurance  
22 industry by providing medical records only "paper reviews," where he selectively reviews,  
23 ignores, and de-emphasizes evidence that proved Plaintiff was disabled and entitled to  
24 benefits, all so he could provide opinions favoring Prudential that it would use to conclude  
25 that Plaintiff was not disabled.  
26

1           56. Prudential's structural conflict of interest led it to unlawfully accept and use Dr.  
2 Guernelli's biased opinions that Plaintiff was able to work because her medical conditions  
3 did not create any work restrictions which would preclude her from working.

4           57. In a letter dated May 31, 2018, Prudential informed Plaintiff that it was denying  
5 the appeal of her claim for LTD benefits after using Dr. Guernelli's opinions to support its  
6 erroneous and unreasonable conclusion that, "...we have determined the medical information  
7 supports the need for medically necessary restrictions and limitations but would not preclude  
8 you from performing the material and substantial duties of your regular occupation as of May  
9 1, 2018, onward."

10           58. Prudential's denial of Plaintiff's claim based on Dr. Guernelli's biased opinions  
11 as set forth in his medical records only "paper review" is an abuse of discretion and an ERISA  
12 procedural violation because in accepting his opinions, among other procedural violations,  
13 Prudential failed to act as her fiduciary and failed to provide a "full and fair" review.

14           59. In *Black and Decker Disability Plan v. Nord*, 538 U.S. 822, 832 (2003), the  
15 Supreme Court warned about biased, conflicted insurance company retained doctors, such  
16 as Dr. Guernelli, who are repeatedly retained by disability insurance companies and/or  
17 third-party vendors, such as MCMC, to review disability claims by noting, "Nor do we  
18 question the Court of Appeals' concern that physicians retained by benefits plans may have  
19 an 'incentive to make a finding of not disabled' in order to save their employers money  
20 and to preserve their own consulting arrangements."

21           60. Pursuant to 29 U.S.C. § 1133, Plaintiff timely appealed Prudential's May 31,  
22 2018 denial of her LTD claim.

23           61. In support of her claim and appeal, Plaintiff submitted to Prudential additional  
24 reliable, credible, compelling medical and other evidence which supported her allegations that  
25 she is disabled and met the aforementioned definitions of disability set forth in the Policy.  
26

1           62.    Upon information and belief, as part of Prudential's review of Plaintiff's claim,  
2 it obtained two (2) addendum/second medical records only "paper reviews" of Plaintiff's  
3 claim from Gianelia F. Guernelli, M.D.

4           63.    Pursuant to 29 C.F.R. § 2560.503-1(h)(3)(v), Prudential knowingly and  
5 blatantly violated ERISA by committing a procedural violation in retaining the same  
6 reviewing medical professional, Dr. Guernelli, to review Plaintiff's claim at *two separate*  
7 *levels of its review*.

8           64.    As alleged *supra*, Dr. Guernelli is a long time medical consultant and medical  
9 records reviewer for Prudential, MCMC and/or the disability insurance industry and has an  
10 incentive to protect his own consulting relationships with Prudential, MCMC and/or the  
11 disability insurance industry by providing medical records only paper reviews, which  
12 selectively review or ignore evidence such as occurred in Plaintiff's claim, in order to provide  
13 opinions and report(s) which are favorable to Prudential and which supported the denial of  
14 Plaintiff's LTD claim.

15           65.    On June 18, 2018, Dr. Guernelli posed three (3) specific questions to Plaintiff's  
16 board-certified treating family medicine physician who completed the March 15, 2017, April  
17 4, 2017, May 10, 2017 and June 19, 2017 medical questionnaires and wrote the May 10, 2018  
18 office visit note, which all supported Plaintiff's inability to work and her claim for LTD  
19 benefits, as referenced *supra*.

20           66.    In a June 19, 2018 response, Plaintiff's physician responded "no" to Dr.  
21 Guernelli's question of whether he "[agreed] with [Dr. Guernelli's] assessment on the  
22 claimant's restrictions and limitations."

23           67.    In a letter dated July 12, 2018, notwithstanding the evidence that clearly  
24 supported Plaintiff's disability claim and confirmed nothing had improved or changed in her  
25 disabling medical conditions which would allow her to work in any occupation, Prudential  
26 informed Plaintiff it was denying her LTD benefits after it concluded, "...the medical

1 information supports you would be able to perform the material and substantial duties of your  
2 regular occupation...”

3 68. Prudential’s statement in its July 12, 2018 denial that “there was no *objective*  
4 *documentation or evidence...*” is clear evidence of an ERISA violation and of Ninth Circuit  
5 case law because Prudential unlawfully imported a new requirement into its Policy that  
6 Plaintiff had to prove her claim by meeting the definitions of disability with “objective”  
7 documentation or evidence, when the Policy did not require her to prove her claim with  
8 objective, or any type of specific evidence.

9 69. Pursuant to 29 U.S.C. § 1133, Plaintiff timely appealed Prudential’s July 12,  
10 2018 denial of her LTD claim/benefits.

11 70. In support of her claim and appeal, Plaintiff, who was *not represented*,  
12 submitted to Prudential additional reliable, credible, compelling medical and other evidence  
13 which supported her allegations that she is disabled and met the aforementioned definitions  
14 of disability set forth in the Policy.

15 71. Plaintiff submitted a September 17, 2018 Physician’s Physical Therapy Initial  
16 Evaluation from her board-certified treating internal medicine physician who confirmed  
17 Plaintiff was, “still on disability...”

18 72. Upon information and belief, as part of Prudential’s review of Plaintiff’s claim,  
19 it obtained a *third addendum* medical records only “paper review” of Plaintiff’s claim from  
20 Gianelia F. Guernelli, M.D.

21 73. Pursuant to 29 C.F.R § 2560.503-1(h)(3)(v), Prudential knowingly and  
22 blatantly violated ERISA regulations by committing a procedural violation in retaining the  
23 same reviewing medical professional, Dr. Guernelli, to review Plaintiff’s claim at *three*  
24 *separate levels of its review*.

25 74. In a letter dated October 15, 2018, notwithstanding Plaintiff’s aforementioned  
26 evidence which clearly proves she met and continues to meet both definitions of disability in

1 the Policy, and that her medical conditions had not improved since Prudential found she was  
2 disabled on or about February 27, 2017, it notified her it rendered a final denial in her LTD  
3 claim.

4 75. In its final denial dated October 15, 2018, Prudential notified Plaintiff she  
5 exhausted all administrative levels of review and could file a civil action lawsuit in federal  
6 court pursuant to ERISA.

7 76. Prudential's structural conflict of interest led it to again unlawfully accept and  
8 use Dr. Guernelli's biased opinions that Plaintiff did not have work related restrictions so it  
9 could in turn, deny her claim for LTD benefits.

10 77. Prudential's denial of Plaintiff's claim based on Dr. Guernelli's biased opinions  
11 as set forth in his medical records only "paper review" is an abuse of discretion and an ERISA  
12 procedural violation because in accepting those opinions, it did not comply with ERISA  
13 which required it to afford her with a "full and fair" review.

14 78. The biased, selective, cherry-picked and unfavorable review of Plaintiff's  
15 LTD claim by Prudential and Dr. Guernelli **directly resulted** from their conflicts of interest  
16 as referenced herein, as well as Dr. Guernelli's desire to protect his consulting  
17 arrangements and business relationships with MCMC, other third party vendors, Prudential  
18 and the disability insurance industry in general.

19 79. Prior to rendering its October 15, 2018 final denial in Plaintiff's LTD claim,  
20 Prudential unlawfully never disclosed or shared with Plaintiff, or her treating medical  
21 professionals (who had all examined/evaluated her personally and opined she was disabled  
22 and unable to work in any occupation), the medical records only "paper review" authored by  
23 its reviewing medical professional, Dr. Guernelli.

24 80. Prudential's ERISA and Ninth Circuit **duty** to disclose during its review Dr.  
25 Guernelli's report to Plaintiff and her treating medical professionals for their review and  
26 response was critical in order for Prudential to provide her with a "full and fair" review.

1           81. Prudential's ERISA and Ninth Circuit duty to disclose Dr. Guernelli's report  
2 during its review to Plaintiff and her treating medical professionals for their review and  
3 response was critical for Prudential to engage her in the "meaningful dialogue" required as  
4 part of a providing a "full and fair" review.

5           82. Prudential's ERISA procedural violation in failing to disclose Dr. Guernelli's  
6 report and to engage Plaintiff in any meaningful dialogue led to it failing to obtain a complete  
7 and accurate picture of Plaintiff's disabling medical conditions, her resulting symptoms and  
8 limitations which corroborate her credible allegations that she is unable to work in any  
9 occupation.

10           83. An ERISA fiduciary making any effort to comply with ERISA's regulations  
11 and the duties it owes to Plaintiff under Ninth Circuit law, would have disclosed Dr.  
12 Guernelli's report to her and her treating medical professionals so they could respond and in  
13 the process, allow Plaintiff to perfect the record so her LTD claim could be approved rather  
14 than denied.

15           84. If Prudential had disclosed Dr. Guernelli's report to Plaintiff and her medical  
16 professionals, they would have been afforded an opportunity to participate in the review to  
17 perfect her claim and Prudential would have engaged her in the "meaningful dialogue"  
18 required by Ninth Circuit law and ERISA during a time when it mattered – before Prudential  
19 rendered its final denial.

20           85. If Prudential had engaged Plaintiff in a dialogue regarding any alleged  
21 deficiencies *it believed* existed in her claim before rendering its final denial, she and her  
22 treating medical professionals could have perfected the claim file (i.e. the Administrative  
23 Record) as required by federal law, so Plaintiff's LTD claim and benefits could have been  
24 approved rather than terminated and later denied.

25           86. As set forth by Prudential in its October 15, 2018 final denial, the reasons and  
26 deficiencies it alleged that existed in Plaintiff's evidence/claim were not inconsequential to

1 *Prudential*, they were the rationale and basis for *why* it terminated and later denied her LTD  
2 claim.

3 87. Prudential's failure to provide Plaintiff and her treating and/or evaluating  
4 medical/vocational professionals with an opportunity to respond to its reviewing medical  
5 professional's report is an ERISA procedural violation, and precluded Prudential from  
6 providing Plaintiff with a "full and fair" review. *See* 29 C.F.R. § 2560.503-1.

7 88. Prudential's action in not providing Dr. Guernelli's report to Plaintiff is  
8 identical to the conflicted insurance company's claim tactics that were rejected in *Salomaa v.*  
9 *Honda Long Term Disability Plan*, 642 F.3d 666, 680 (9th Cir. 2011):

10 "The plan evidently based its denial in large part on review of Salomaa's file by two  
11 physicians, one for the first denial, *another for the final denial*. They both wrote their  
12 appraisals for the plan administrator. Yet the plan failed to furnish their letters to  
13 Salomaa or his lawyer. The regulation, quoted above, requires an ERISA plan to  
14 furnish 'all documents, records, and other information relevant for benefits to the  
15 claimant.' *A physician's evaluation provided to the plan administrator falls squarely*  
16 *within this disclosure requirement*" (bold and emphasis added).

17 89. On October 31, 2019, after retaining undersigned counsel, pursuant to the  
18 ERISA fiduciary duty it owes Plaintiff, she requested for Prudential to re-open her LTD claim  
19 and submitted *new and material* medical and non-medical evidence for its consideration in  
20 her LTD claim.

21 90. The evidence submitted by Plaintiff with her October 31, 2019 letter should *all*  
22 be in Prudential's Administrative Record (i.e. claim file), but for Prudential's failure to  
23 comply with ERISA by providing her with a "full and fair" review.

24 91. The evidence submitted by Plaintiff with her October 31, 2019 letter should *all*  
25 be in Prudential's Administrative Record (i.e. claim file), but for Prudential's failure to act as  
26 her ERISA fiduciary, as well as its failure to investigate and administer the claim "solely in  
her best interests" as required by 29 U.S.C. § 1104(a).

92. In her October 31, 2019 letter, Plaintiff informed Prudential of the serious  
issues she had with Dr. Guernelli's opinions/medical reports which raised legitimate

1 questions about the thoroughness of Dr. Guernelli's reports/opinions as well as with his  
2 independence and bias as documented in his reports.

3 93. In her letter dated October 31, 2019, Plaintiff reminded Prudential of its  
4 fiduciary duty pursuant to 29 U.S.C. § 1104(a)(1), as well as *Metro. Life Ins. Co., v. Glenn*,  
5 554 U.S. 105, 115 (2008) which holds Prudential to a high legal standard in the  
6 administration of her claim:

7 ERISA imposes higher-than-marketplace quality on standards on insureds. It sets  
8 forth a special standard of care upon a plan administrator, namely, that the  
9 administrator "discharge [its] duties" in respect to discretionary claims processing  
"solely in the interests of the participants and beneficiaries" of the plan, §  
1104(a)(1)...

10 94. In her October 31, 2019 letter, Plaintiff also summarized for Prudential her  
11 compelling medical, vocational and lay-witness evidence which proved she has been disabled  
12 since October 6, 2017 and that she remains "Disabled" as that term is defined in the Policy.

13 95. In support of her claim, Plaintiff submitted a June 24, 2019 narrative letter from  
14 her long-time treating board-certified family medicine physician who after reviewing Dr.  
15 Guernelli's third medical records only "paper review," confirmed it was his opinion that,  
16 "[Plaintiff] has clearly been unable to work in her occupation or in a similar occupation since  
17 2/2017. She continued to be completely unable to work in April of 2018, and remains unable  
18 to work to this day."

19 96. Plaintiff's same physician also confirmed in his narrative letter that, "[Plaintiff]  
20 is unable to return to her own job, or even a similar sedentary job. I suspect she will remain  
21 in this state of disability indefinitely..."

22 97. Plaintiff submitted a July 21, 2019 narrative letter from her treating board-  
23 certified internist who after reviewing Dr. Guernelli's third medical records only "paper  
24 review" confirmed, "My professional medical opinion is that [Plaintiff] is not able to work in  
25 any job and is disabled as required by both of Prudential's definitions of disability that are  
26 provided. Further, [Plaintiff] has not been able to work in any job since February 2017."



1           98. Plaintiff also submitted to Prudential a Functional Capacity Evaluation report  
2 dated February 15, 2019, wherein after an extensive three (3) hour clinical interview, physical  
3 examination and simulated objective workplace testing which produced valid test results, the  
4 qualified physical therapist concluded that, "...[Plaintiff] is UNABLE to perform the physical  
5 demands or material duties of her past work as a Fraud Investigator or any other work  
6 including other types of SEDENTARY work on a regular and consistent basis." (Original  
7 emphasis).

8           99. In response to Dr. Guernelli's opinions as set forth in his medical records only  
9 "paper review," the physical therapist stated, "[Dr. Guernelli's] opinions regarding  
10 [Plaintiff's] work tolerance...lack merit and do not correlate with the medical information in  
11 her case."

12           100. Further supporting her claim, Plaintiff submitted a Vocational Assessment  
13 (evaluation) dated September 18, 2019 from a certified vocational expert, who after  
14 personally interviewing Plaintiff and reviewing the relevant evidence in Plaintiff's claim,  
15 along with the "Regular Occupation" and "Any Gainful Occupation" definitions of disability  
16 set forth in the Policy, concluded, "...Based on a review of the evidence in [Plaintiff's] claim  
17 as well as my interview with her, it is clearly evident that her medical conditions and overall  
18 inability to work medically and vocationally in her regular occupation and in my gainful  
19 occupation has only deteriorated since she last worked..."

20           101. Plaintiff also submitted to Prudential updated medical records from each of her  
21 treating medical professionals which confirmed that she remained disabled as that term is  
22 defined in Prudential's Policy and that her disabled medical conditions had not improved she  
23 became disabled and last worked.

24           102. Plaintiff also submitted to Prudential a list of her current medications, as well  
25 as the adverse side effects those medications cause her to experience and how those side  
26 effects preclude her from being able to work in any occupation.

1           103. Plaintiff also submitted to Prudential her September 16, 2019 sworn affidavit  
2 where she confirmed that she remained unable to work in any occupation and that she had  
3 been disabled due to her disabling medical conditions and the limitations they imposed since  
4 she last worked on February 27, 2017.

5           104. Plaintiff confirmed in her affidavit that her disabling medical conditions, as  
6 well as the resulting disabling symptoms and limitations they cause her to experience had not  
7 improved in any manner that would allow her to return to any type of work or occupation  
8 since February 27, 2017.

9           105. Plaintiff also submitted to Prudential three (3) other sworn affidavits authored  
10 by her cousin and two (2) long-time friends, who all confirmed Plaintiff is unable to work in  
11 any occupation and that her disabling medical conditions have not improved in any  
12 meaningful way since the date she originally became disabled, February 27, 2017.

13           106. In her October 31, 2019 letter to Prudential, Plaintiff informed it that Dr.  
14 Guernelli is biased because he is repeatedly retained by the disability insurance industry  
15 and/or Prudential to perform the sort of medical records only “paper reviews” he was retained  
16 to perform in Plaintiff’s claim.

17           107. In her October 31, 2019 letter, Plaintiff informed Prudential that Dr. Guernelli’s  
18 extensive relationship with the disability insurance industry, including with Prudential,  
19 resulted in his extreme bias in favor of Prudential and against disabled individuals such as the  
20 Plaintiff.

21           108. Prudential took no action to investigate Dr. Guernelli’s bias and conflicts of  
22 interest in performing medical records reviews such as the one he performed in Plaintiff’s  
23 claim.

24           109. All of the reliable evidence Plaintiff submitted to Prudential consistently proves  
25 she is unable to work in *any occupation* and that she meets both definitions of disability set  
26 forth in the Policy.

1           110. In a letter dated November 1, 2019 (*See* Exhibit “D”), in spite of Plaintiff’s  
2 request that it re-open her disability claim, Prudential informed her that its October 15, 2018  
3 decision was final and “therefore, we are unable to accept any further appeals.”

4           111. In a letter dated January 13, 2020, Plaintiff requested for a *second* time that  
5 Prudential re-open her claim and reminded it of its fiduciary duty to do so pursuant to 29  
6 U.S.C. § 1104(a)(1) and the high legal standard *Glenn* imposed on Prudential to act in her  
7 best interests.

8           112. Following Plaintiff’s initial application for long-term disability benefits, at  
9 Prudential’s instruction and request in a November 7, 2017 letter (*See* Exhibit “E”), she  
10 applied for Social Security disability benefits from the Social Security Administration  
11 (hereinafter referred to as the “SSA”).

12           113. Prudential informed Plaintiff in its November 7, 2017 letter that if she did not  
13 file a claim for SSA disability benefits, it would reduce her LTD benefit amount by an  
14 estimate of what her SSA disability benefit amount may be, even if she was not receiving any  
15 benefits from SSA.

16           114. Prudential requiring Plaintiff to file a claim for Social Security disability  
17 benefits when it was aware that federal law, specifically SSA law, required that Plaintiff be  
18 unable to work in any occupation in order to qualify for SSA benefits is highly probative  
19 evidence that Prudential *believed* Plaintiff meet SSA’s more difficult to meet definition of  
20 disability which is defined as being unable to work in any occupation that may exist in the  
21 national economy.

22           115. Prudential’s belief Plaintiff was entitled to SSA disability benefits is  
23 documented in its November 7, 2017 letter that states if she did not apply for SSA disability  
24 benefits, then Prudential would begin reducing her LTD benefit amount by a monthly amount  
25 it *estimated* she would receive from SSA even though she would not actually be receiving a  
26 disability benefit from SSA.

1           116. On September 18, 2019, the SSA and an Administrative Law Judge (hereinafter  
2 referred to as the “ALJ”) held a hearing in Plaintiff’s claim. Plaintiff appeared at the SSA  
3 hearing before the Judge and testified about her disabling medical conditions and her severe  
4 symptoms. Plaintiff also testified about the disabling functional limitations she experiences  
5 which preclude her from functioning on a daily and/or working in any occupation.

6           117. After conducting a full hearing on September 18, 2019 and carefully listening  
7 to Plaintiff’s testimony, along with reviewing much of the same evidence Prudential  
8 previously reviewed, the ALJ concluded that since October 1, 2018, Plaintiff has been  
9 disabled and unable to work in any gainful occupation that may exist in the national economy..

10           118. The decision from the SSA ALJ confirms that he found at the present time and  
11 dating back to October 2018, due to disabling medical conditions, Plaintiff has been unable  
12 to engage in engage in any work, even *Sedentary* work.

13           119. In her January 13, 2020 letter, Plaintiff notified Prudential that her Social  
14 Security disability claim was approved following her hearing with the SSA ALJ.

15           120. On January 13, 2020, to afford Prudential the opportunity to review *all of*  
16 *Plaintiff’s evidence the ALJ and SSA considered in her claim*, she submitted the ALJ’s  
17 November 8, 2019 Social Security “Notice of Decision – Fully Favorable,” as well as a  
18 complete copy of her Social Security disability claim file from SSA’s hearing office.

19           121. SSA’s approval of Plaintiff’s disability claim is highly relevant and probative  
20 evidence for this Court to consider regarding the unreasonableness, unlawfulness and  
21 implausibility of Prudential’s termination of her benefits and denial of her claim.

22           122. Prudential’s failure to re-open Plaintiff’s LTD claim and consider the SSA  
23 ALJ’s decision and SSA claim file is evidence of its unlawfulness and unreasonableness and  
24 that Prudential did not act as her ERISA fiduciary and did not afford Plaintiff a “full and fair”  
25 review as required by ERISA.

1           123. The SSA ALJ's approval of Plaintiff's SSA claim is highly probative and  
 2 relevant evidence of Plaintiff's disability because unlike Prudential, who is a conflicted  
 3 fiduciary, SSA's ALJ is a truly independent, unconflicted fact finder and decisionmaker.

4           124. The SSA ALJ's approval of Plaintiff's claim after hearing her testimony and  
 5 reviewing the evidence in her SSA claim file that she submitted to Prudential, is the decision  
 6 that an unconflicted and impartial decisionmaker "would have or should have" made in  
 7 Plaintiff's LTD claim.

8           125. The SSA ALJ's approval of Plaintiff's SSA claim is highly probative and  
 9 relevant evidence of Plaintiff's disability because SSA's definition of disability is  
 10 *significantly more difficult* for Plaintiff to meet when compared to the "Regular Occupation"  
 11 or "Any Gainful Occupation" definitions of disability set forth in Prudential's Policy.

12           126. SSA's definition of disability is *significantly more difficult* to meet than  
 13 Prudential's "Any Gainful Occupation" definition of disability because SSA law defines  
 14 "Disability" as an individual's "inability to engage in any substantial gainful activity by  
 15 reason of any medically determinable physical . . . impairment" that is of "such severity  
 16 [the claimant] . . . cannot, considering his age, education, and work experience, engage in  
 17 *any other kind of substantial gainful work* which exists in the national economy,  
 18 regardless of whether such work exists in the immediate area in which he lives." *See* 42  
 19 U.S.C. § 423(d)(1)(A), (2)(A)(emphasis added) and *Montour v. Harford Life & Accident*  
 20 *Ins. Co.* 588 F.3d 623, 636 (9<sup>th</sup> Cir. 2009).

21           127. In contrast to SSA's definition of disability reference in paragraph 126,  
 22 according to Prudential's "Any Gainful Occupation" definition of disability, in her LTD  
 23 claim, Plaintiff could meet that definition of disability in Prudential's Policy and be entitled  
 24 to LTD benefits even if she could work in an occupation and earn as much as "80%" of her  
 25 pre-disability indexed monthly earnings.

1           128. Prudential's failure to re-open Plaintiff's claim so it could review the submitted  
2 she submitted, such as the ALJ's favorable decision, her SSA claim file and the other credible,  
3 reliable evidence she submitted to Prudential, is clear evidence that Prudential failed to act as  
4 her ERISA fiduciary and failed to administer the LTD claim solely in her best interests.

5           129. Prudential's failure to re-open Plaintiff's claim so it could review the evidence  
6 she submitted, such as the ALJ's favorable decision, her SSA claim file, and the other  
7 credible, reliable evidence she submitted to Prudential, is clear evidence Prudential did not  
8 provide her with a "full and fair" review as required by ERISA.

9           130. Prudential's failure to re-open Plaintiff's claim so it could review Plaintiff's  
10 evidence (and if necessary, any other evidence to perfect the record) violates its ERISA and  
11 Ninth Circuit duties to investigate the claim and engage her in the "meaningful dialogue" this  
12 circuit requires in order to affords her with the opportunity to perfect her claim so it could be  
13 approved.

14           131. Prudential's failure to re-open Plaintiff's claim so it could admit and consider  
15 the evidence she submitted following its final denial is a failure to investigate and failure to  
16 engage her in the "meaningful dialogue" required by *Montour v. Hartford Life & Accident*  
17 *Ins. Co.* 582 F.3d 933 (9th Cir. 2009) and *Salomaa*.

18           132. In a letter dated January 14, 2020 (*See* Exhibit "D"), Prudential again refused  
19 to re-open Plaintiff's claim so it could consider the evidence she submitted. The evidence  
20 Plaintiff submitted should have already been in her claim file (i.e. the Administrative Record)  
21 and reviewed by Prudential before it issued its final denial.

22           133. In its letter dated January 14, 2020, Prudential's reason for deliberately not re-  
23 open Plaintiff's claim is due to its allegation that "...we are unable to accept any further  
24 appeals."  
25  
26

1           134. Prudential never explained to Plaintiff how its decision to not re-open her claim  
2 was consistent with its ERISA fiduciary duty to administer the claim “solely” in her best  
3 interests. *See* 29 U.S.C. § 1104(a).

4           135. Prudential’s October 15, 2018 final denial, its October 31, 2019 and January  
5 14, 2020 letters are clear evidence it willfully breached its fiduciary duty to Plaintiff by failing  
6 to administer the claim in her best interests, failing to investigate, failing to engage her in any  
7 dialogue, and failing to provide her with a “full and fair review” as required by ERISA. *See*  
8 29 C.F.R. § 2560.503-1.

9           136. Prudential’s failure to re-open Plaintiff’s claim after her two requests so it could  
10 consider the evidence she submitted and that she asked it to admit to its claim file (i.e.  
11 Administrative Record), is palpable evidence of its structural conflict of interest and desire to  
12 save money by not paying Plaintiff the benefits she is owed.

13           137. Prudential’s failure to re-open Plaintiff’s claim after her two requests so it could  
14 consider the evidence she submitted and that she asked it to admit to its claim file (i.e.  
15 Administrative Record) is an abuse of any discretion the LTD Policy may have afforded it.

16           138. The reason Plaintiff’s requested for Prudential to re-open her LTD claim, and  
17 her reason for submitting all of the evidence she did following its final denial was so she and  
18 Prudential could “re-create” the claim file (i.e. Administrative Record) and claim process  
19 Prudential was required to afford her if it had complied with ERISA and provided her with a  
20 “full and fair” review of her claim before it issued its final denial.

21           139. The evidence Plaintiff submitted to Prudential with the aforementioned letters  
22 and asking it to re-open her claim should be part of the Administrative Record and considered  
23 by this Court in its determination regarding whether Plaintiff meets either the “Regular  
24 Occupation” and/or “Any Occupation” definitions of disability set forth in the LTD Policy.

25           140. Plaintiff respectfully requests for the Court to admit and consider all the  
26 evidence not only in her claim file (i.e. Administrative Record), but also the evidence she

1 submitted to Prudential following its final denial pursuant to ERISA and *Abatie*, 458 F.3d at  
2 973, which permit the Court to consider her evidence so it can remedy Prudential's ERISA  
3 procedural violations and afford her the "full and fair" review she never received from  
4 Prudential. *Abatie* allows the Court to consider all of evidence Plaintiff submitted following  
5 Prudential's final denial:

6 Even when procedural irregularities are smaller, though, and abuse of discretion  
7 review applies, the court may take additional evidence when the irregularities have  
8 prevented full development of the administrative record. In that way the court may,  
in essence, recreate what the administrative record would have been had the procedure  
been correct.

9 141. Due to Defendant's ERISA procedural errors as set forth above, Plaintiff plans  
10 to file a motion and seek an Order permitting her to supplement the claim file (i.e.  
11 Administrative Record), with the evidence she submitted to Defendant after its final denial  
12 issued on October 15, 2018. Plaintiff will file her motion and seek an Order so she is afforded  
13 an opportunity to re-create the administrative process as it should have been pursuant to  
14 ERISA and *Abatie*.

15 142. The Court granting Plaintiff's motion to supplement the Administrative Record  
16 (i.e. claim file) will allow all of the evidence Plaintiff submitted to Defendant following its  
17 final denial to be admitted into the Administrative Record, and to be considered by the Court  
18 in its merits determination regarding whether Plaintiff is entitled to disability benefits.

19 143. During its reviews of Plaintiff's claim, Prudential both negligently and  
20 intentionally committed numerous ERISA procedural violations identified herein that  
21 allowed it to unlawfully terminate and then deny Plaintiff's LTD claim and benefits.

22 144. Throughout the entirety of Plaintiff's claim and prior to the date she filed this  
23 Complaint, Prudential's ERISA procedural violations include, but are not limited to,  
24 completely failing to credit, reference, consider, and/or selectively reviewing and de-  
25 emphasizing all of Plaintiff's reliable evidence which proves she met the "Regular  
26



1 Occupation” and “Any Gainful Occupation” definitions of disability in the LTD Policy and  
2 is entitled to benefits.

3 145. In evaluating Plaintiff’s claim, Prudential owed her a fiduciary duty and had an  
4 obligation pursuant to ERISA to administer her claim “solely in [her] best interests...” which  
5 it failed to do.<sup>1</sup>

6 146. Due to all of the aforementioned conflicts of interest and bias which Plaintiff  
7 alleges not only influenced, but also resulted in the termination and denial of her claim,  
8 Prudential violated ERISA and its fiduciary duty because it unlawfully and implausibly  
9 administered the claim “solely” in its *own* best interests, not hers.

10 147. Throughout the entirety of Plaintiff’s claim prior to the date she filed this  
11 Complaint, Prudential’s failure to investigate the claim and to engage in any dialogue, and  
12 failure to ask for and/or obtain the evidence *it believed* was necessary and critical to cure any  
13 deficiencies *it believed existed* so Plaintiff could perfect her claim and have it approved is  
14 particularly egregious given the nature and severity of her disabling medical conditions which  
15 include objective medical findings and subjective disabling complaints which prove she  
16 continues to be disabled as those terms are defined in the LTD Policy.

17 148. Plaintiff alleges Prudential’s review was neither full nor fair, and violated  
18 ERISA, specifically, 29 U.S.C. § 2560.503-1, for many reasons including, but not limited  
19 to: failing to act as Plaintiff’s ERISA fiduciary by not re-opening Plaintiff’s claim so it  
20 could consider the evidence it failed to obtain and review prior to its final denial; failing to  
21

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22 <sup>1</sup> It sets forth a special standard of care upon a plan administrator, namely, that the  
23 administrator “discharge [its] duties” in respect to discretionary claims processing “solely  
24 in the interests of the participants and beneficiaries” of the plan, § 1104(a)(1); it  
25 simultaneously underscores the particular importance of accurate claims processing by  
26 insisting that administrators “provide a ‘full and fair review’ of claim denials,” Firestone,  
489 U.S., at 113, 109 S. Ct. 948, 103 L. Ed. 2d 80 (quoting § 1133(2)); and it supplements  
marketplace and regulatory controls with judicial review of individual claim denials, see §  
1132(a)(1)(B). *Metro. Life Ins. Co. v. Glenn*, 128 S. Ct. 2343, 2350 (U.S. 2008).

1 admit the evidence Plaintiff submitted following its final denial; violating ERISA by  
2 retaining the same reviewing medical professional, Dr. Guernelli, to review Plaintiff's claim  
3 at *three separate levels of review*; by unlawfully inserting a Policy requirement that Plaintiff  
4 must prove her claim with "objective" documentation or "objective" evidence when there is  
5 no requirement that she do so in the Policy; by abdicating and outsourcing its ERISA fiduciary  
6 duty by retaining a biased third-party vendor/company (MCMC) to be involved in the review  
7 of Plaintiff's claim; by failing to credit Plaintiff's credible, reliable evidence which includes  
8 but is not limited to, giving significant weight to the SSA ALJ's decision (and the evidence  
9 in her SSA claim file) and the approval of Plaintiff's SSA claim; by abdicating and  
10 outsourcing its ERISA fiduciary duty in retaining a biased third-party vendor/company  
11 (MCMC) who in turn retained a biased medical consultant (Dr. Guernelli) to review only  
12 Plaintiff's medical records and render opinions in her claim; by failing to have Plaintiff's  
13 claim reviewed by a truly independent third-party vendor and independent medical  
14 consultant; by de-emphasizing, cherry picking and selectively reviewing Plaintiff's evidence  
15 in an effort to terminate her benefits and later deny her claim when all her evidence proved  
16 she met and continues to meet both the "Regular Occupation" and "Any Gainful Occupation"  
17 definitions of disability in the Policy; by providing biased and one sided reviews of Plaintiff's  
18 claim that failed to consider all of the evidence submitted by her and/or by de-emphasizing  
19 medical and other evidence which supported Plaintiff's claim and the approval of her claim;  
20 by disregarding and/or failing to consider Plaintiff's disabling subjective and self-reported  
21 complaints/symptoms and limitations; by failing to consider the *combined and aggregate*  
22 *effect* that all of her disabling medical conditions and resulting limitations documented in her  
23 evidence had and have on her ability to work in any occupation; by failing to engage Plaintiff  
24 in a "meaningful dialogue" so she and her treating and/or evaluating medical/vocational  
25 professionals could respond to Prudential's reviewing medical consultant/professional's (Dr.  
26 Guernelli) report; by precluding Plaintiff from being able to submit the necessary evidence to

1 perfect her claim so it could be approved; and by failing to consider the adverse impact the  
2 side effects Plaintiff's medications have had, and continue to have on her ability to engage in  
3 her "Regular Occupation" or "Any Occupation" as that term is defined in Policy.

4 149. Plaintiff alleges one reason Prudential provided an unlawful review that was  
5 neither full nor fair and that violated ERISA, specifically, 29 U.S.C. § 2560.503-1, is due to  
6 its financial conflict of interest which manifested as a result of Prudential's roles as the  
7 decision maker and payor of benefits.

8 150. Prudential's conflict of interest provided it with a financial incentive to  
9 terminate and then deny Plaintiff's LTD claim, because every dollar it saved by not paying  
10 Plaintiff the disability benefits she is entitled to now represents a monetary profit for  
11 Prudential.

12 151. Prudential's self-serving actions are similar to the conflicted and unlawful  
13 tactics and review the insurance company provided the plaintiff in *Salomaa*, where the Court  
14 referenced the insidious nature of Prudential's conflicts by noting, "The plan with a conflict  
15 of interests also has a financial incentive to cheat."

16 152. Prudential's unlawful review, as well as its dishonest failure and refusal to re-  
17 open Plaintiff's claim when Plaintiff notified it of the litany of ERISA procedural violations  
18 it committed throughout the entirety of her claim is similar to tactics the conflicted insurance  
19 company did in *Salomaa* by "cheating" her out of the disability benefits she is entitled to as  
20 Mr. Salomaa was cheated out of disability benefits by his conflicted insurance company.

21 153. Regardless of the standard of review, discretionary or *de novo*, Plaintiff is  
22 entitled to discovery regarding Prudential's aforementioned conflicts of interest, its bias and  
23 business relationships referenced herein, as well as the conflicts of interest of any of its third-  
24 party vendor(s)(including but not limited to MCMC) hired by Prudential and any medical  
25 professional (including but not limited to Dr. Guernelli) employed by and/or retained by  
26 Prudential or its third-party vendor(s) to review Plaintiff's claim.

1           154. Regardless of the standard of review, discretionary or *de novo*, Plaintiff is  
2 entitled to discovery regarding any individual, medical professional or otherwise, who  
3 participated in the review and administration of her claim.

4           155. Regardless of the standard of review, the Court should allow discovery so it  
5 can properly weigh and consider the nature, extent and effect that *any conflict of interest*  
6 and/or any ERISA procedural violation had in influencing or causing Prudential's decision to  
7 terminate and then later deny Plaintiff's LTD claim.

8           156. Plaintiff asserts that any third-party vendor (including but not limited to  
9 MCMC) retained by Prudential, and in turn any medical professional hired by any of those  
10 third-party vendors to review evidence in Plaintiff's claim, operated under a conflict of  
11 interest due to their extensive business relationship with Prudential and their relationship with  
12 the disability insurance industry in general.

13           157. Prudential's third-party vendor(s) and its reviewing medical professional's (Dr.  
14 Guernelli) conflicts of interest as referenced herein, tainted Dr. Guernelli's opinions and  
15 resulted in his biased, adverse opinions against Plaintiff which formed the basis of  
16 Prudential's unlawful and implausible decision to unreasonably deny her claim.

17           158. Even if Prudential's Policy contains discretionary language, the standard of  
18 review should be *de novo* because Prudential's numerous ERISA procedural and other  
19 violations as set forth herein are so egregious they warrant *de novo* review.

20           159. As a direct result of Prudential's decision to terminate, and then later deny  
21 Plaintiff's disability claim, she has been substantially injured and suffered damages in the  
22 form of lost LTD benefits, in addition to other potential non-disability employee benefits she  
23 may be entitled to receive through or from Prudential, the Plan, from any other Company Plan  
24 and/or the Company as a result of being found disabled in this matter.

25           160. Upon information and belief, Plaintiff alleges other potential non-disability  
26 employee benefits she may be entitled to include, but are not be limited to, health insurance

1 benefits and coverage, and other insurance related coverage or benefits, retirement benefits  
2 or a pension, life insurance coverage and the waiver of any premium(s) due on a life insurance  
3 policy which may provide coverage for her and her family/dependents.

4 161. Plaintiff seeks any and all employee benefits, including but not limited to  
5 disability benefits and any other benefits she may be entitled to and due from the Defendants  
6 as a result of being found disabled in this matter.

7 162. Pursuant to 29 U.S.C. § 1132, Plaintiff is entitled to recover unpaid disability  
8 and non-disability employee benefits, prejudgment interest, reasonable attorney's fees and  
9 costs from Defendants.

10 163. Plaintiff is entitled to prejudgment interest at the legal rate pursuant to A.R.S.  
11 § 20-462, or at such other rate as is appropriate to compensate her for the losses she has  
12 incurred as a result of Defendants' nonpayment of benefits.

13 WHEREFORE, Plaintiff prays for judgment as follows:

14 A. For an Order admitting/supplementing the evidence into the claim file (i.e. the  
15 Administrative Record) that Plaintiff submitted to Prudential following its final denial;

16 B. For an Order finding that the evidence in Plaintiff's claim file (i.e.  
17 Administrative Record) is sufficient to prove that she met the "Regular Occupation"  
18 definition of disability set forth in the relevant Plan and/or Policy, and she is entitled to those  
19 disability benefits, and any other non-disability employee benefits as a result of the Order,  
20 from the date she was first entitled to these benefits but denied them, through the date of  
21 judgment with prejudgment interest thereon;

22 C. For an Order directing Defendants to continue paying Plaintiff the  
23 aforementioned benefits until such a time as she meets the conditions for the termination of  
24 benefits;

25 D. Assuming the issue is ripe before the Court (i.e. the Policy's 24 month "Regular  
26 Occupation" definition of disability timeframe has expired), Plaintiff seeks an Order finding

1 that the evidence in Plaintiff's claim file (i.e. Administrative Record) is sufficient to prove  
2 that she met and continues to meet the "Any Gainful Occupation" definition of disability set  
3 forth in the relevant Plan and/or Policy, and she is entitled to these LTD benefits from the  
4 date she was first eligible for them through the date of the Order with pre-judgment interest  
5 thereon;

6 E. Assuming the issue is ripe before the Court and the Court issues an Order  
7 finding that Plaintiff meets the "Any Gainful Occupation" definition of disability in the Plan  
8 and/or Policy, she seeks an Order that Defendants must continue paying these LTD benefits  
9 and any other non-disability employee benefits she is entitled to as a result of that Order, until  
10 such a time as she meets the conditions for the termination of these benefits;

11 F. Alternatively, if the Court determines that the evidence in Plaintiff's claim file  
12 (i.e. Administrative Record) is sufficient to prove that Plaintiff met the "Regular Occupation"  
13 definition of disability in the Plan and/or the Policy for the entire duration of that definition  
14 of disability's timeframe, but is unable to make an "Any Gainful Occupation" determination  
15 for any reason, she then seeks an Order remanding her claim to Prudential to include Ordering  
16 that all of the evidence Plaintiff submitted to Prudential is admitted to the claim file (i.e.  
17 Administrative Record), and Prudential must consider this evidence in its review to determine  
18 whether she meets the "Any Gainful Occupation" definition of disability in the Plan and/or  
19 Policy and is entitled to those benefits;

20 G. In the event the Court is unable to render a decision as to whether Plaintiff is  
21 entitled to any LTD benefits from Prudential for any reason, or in the event the Court  
22 determines that Prudential should re-open her claim and consider the evidence Plaintiff  
23 submitted following Prudential's final denial, in addition to the evidence that was in her claim  
24 file on the day of its final denial, she seeks an Order remanding her claim to Prudential for it  
25 to admit all of Plaintiff's evidence to the claim file (i.e. Administrative Record) as part of its  
26

1 determination as to whether she meets the relevant definition of disability and is entitled to  
2 benefits in a matter consistent with the Order;

3 H. For attorney's fees and costs incurred as a result of prosecuting this suit  
4 pursuant to 29 U.S.C. § 1132(g); and

5 I. For such other and further relief as the Court deems just and proper.

6 DATED this 11<sup>th</sup> day of February, 2020.

7 SCOTT E. DAVIS, P.C.

SCOTT M. HARRIS, P.C.

8 By: /s/ Scott E. Davis, Esq.  
9 Scott E. Davis  
Attorney for Plaintiff

By: /s/ Scott M. Harris, Esq.  
Scott M. Harris  
Attorney for Plaintiff